APPENDIX

Statutory Provisions

1. Sections 96.070 and 277.065 of the Kentucky Revised Statutes provide:

Section 96.070 [3490-25] ***Fourth-class city may grant rights of way to utilities; conditions.*** The legislative body of any city of the fourth class may grant right of ways over the public streets or public grounds of the city to any utility company, on such conditions as seem proper, shall have a supervising control over the use of same, and shall regulate the speed of cars and signals and fare on street cars. The legislative body may compel any railroad company to erect and maintain gates at street crossings and prevent railroads from obstructing public ways of the city, and fix penalties for the violation of these provisions. Nothing in this section shall prevent any property owner whose property abuts on a street on which a railroad is granted a right of way from recovering from the railroad any damage done to his property by the occupation or use of the street by the railroad.

Section 277.065 Allocation of costs of eliminating grade crossings between railroad and governmental units. The entire construction costs of projects for the elimination of hazards of railroad-highway crossings, including the separation or protection of grades at crossings, and reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate railroad grade crossings which may be paid for in whole or part from state funds, including, but not limited to, the cost of preparing the plans and specifications and supervising the improvement, the acquisition of necessary property, the construction of approaches, drainage structures, roadways and pavements, accommodations for public utilities, and damages paid to abutting property owners, shall be allocated between the railroad involved, and the governmental unit or units involved in the same ratio as the net benefit received by such railroad from the project bears to the net benefit accruing to the public using the highway, and in no case shall the net benefit

to any railroad or railroads be deemed to be more than ten percent of the total benefit resulting from the project. The Department of Highways shall be responsible for determining the proportion of the benefits derived by the railroad from the project, and shall fix standards for the determining of said benefits which shall be consistent with the standards adopted for similar purposes by the United States Bureau of Public Roads under the Federal-Aid-Highway Act of 1944. The cost of maintenance of all structures for the elimination of railroad grade crossings, and of installations for the protection of existing grade crossings, constructed or installed under this section, shall be borne by the governmental unit or units constructing them. Before any state funds shall be expended for any project constructed under this section, a contract shall be entered into between the railroad and the governmental unit or units involved setting forth the duties of each as to construction and maintenance of the project. (1958, c. 78, § 1; effective June 19, 1958)

2. Ordinance 451 of the City of Jeffersontown, Kentucky provides:

CITY OF JEFFERSONTOWN
JEFFERSON COUNTY, KENTUCKY

Ordinance No. 451, Series 1966

An Ordinance relating to

SAFETY IN OPERATION OF RAILROAD COMPANIES WITHIN THE CITY OF JEFFERSONTOWN

WHEREAS, it is deemed desirable for the City of Jeffersontown to exercise its police power in regard to railroads operated within the city limits of the City of Jeffersontown to protect the public safety, welfare and convenience; and

WHEREAS, Kentucky Revised Statutes, Section 96.070, provides express authority for the operation of said police power; and

WHEREAS, there has been constructed by the Jefferson County Board of Education a new high school at

the southeast corner of the grade crossing of Six Mile Lane and a railroad owned and operated by the Southern Railway Company, a Virginia corporation; and

WHEREAS, the City Council of the City of Jeffersontown has found that the volume of suburban traffic, including school buses and other school-related traffic, taken together with the number of trains, creates a serious hazardous condition that endangers the public safety, welfare and convenience;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF JEFFERSONTOWN, KENTUCKY, DOES ORDAIN AS FOLLOWS:

Section 1. That the Southern Railway Company shall within sixty (60) days from the effective date of this ordinance erect and maintain automatic safety gates for traffic at the grade crossing of Six Mile Lane and a railroad owned and operated by the Southern Railway Company, a Virginia corporation;

Section 2. That all railway companies using any rail line intersecting with any public street in the City of Jeffersontown shall give timely warning of the approach of said train by the ringing of a bell, or in the case of imminent danger, the sounding of a whistle, unless there are provided safety gates or a watchman at said grade crossings;

Section 3. That all grade crossings and rights of way shall be so designed, graded and maintained as to provide from street level at a distance of fifty (50) feet from the center of the grade crossing a visual line of sight of not less than one hundred (100) yards to both the right and left to the center of said rights of way;

Section 4. That it shall be unlawful for one or more railway trains to so operate as to prevent the use of a grade crossing by vehicles for a period of time exceeding five (5) minutes;

Section 5. That all railroads are required to erect and maintain suitable signs visible by day and by night, and to place suitable markings at all grade

crossings requiring all vehicles to come to a full stop before entering such grade crossings, said signs to be approved by the Chief of Police of the City of Jeffersontown;

Section 6. That all ordinances or parts of ordinances conflicting with the provisions of this ordinance are hereby repealed, insofar as the same affect this ordinance;

Section 7. That this ordinance shall take effect and be in force from and after its passage and publication;

Section 8. If any word or words, phrase or phrases, sentence or sentences, section or sections of this ordinance shall be declared unconstitutional or invalid for any purpose, it shall thereby not invalidate any other portion of this ordinance;

Section 9. That any person, persons or companies that violate any of the provisions of this ordinance shall be fined not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00) for each separate violation or for each day that there is failure to comply with the provisions of this ordinance.

PASSED AND APPOVED BY THE CITY COUNCIL OF JEFFERSONTOWN ON THIS DAY OF SEPTEMBER 12, 1966.

ATTEST:

FRANKLIN J. CHAMBERS, Mayor

BERNICE HOPKINS, City Clerk

Opinion of the Court of Appeals

No. 17651

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Appeal from the United States District Court
For the Western District of Kentucky

SOUTHERN RAILWAY COMPANY, *Plaintiff-Appellant,*

v.

FRANKLIN J. CHAMBERS, *et al., Defendants-Appellees.*

Decided April 25, 1967.

Before Phillips, Edwards and Peck, Circuit Judges.

PER CURIAM. The appellant railway company filed this action to enjoin enforcement of a municipal ordinance which would require the railroad, among other things, at its own expense to erect and maintain safety gates for traffic at a railroad crossing within the corporate limits of the municipality. District Judge James F. Gordon refused to grant a preliminary injunction and dismissed the complaint upon the grounds stated in his findings of fact and conclusions of law, printed as an appendix hereto. Reference is made to the appendix for a more detailed statement of facts. The district judge continued in effect for a period of ten days a temporary restraining order restraining enforcement of the ordinance, in order to give appellant a reasonable period of time to seek equitable relief in the State courts of Kentucky.

Under date of January 18, 1967, this court entered an order enjoining enforcement of the ordinance pending a

decision on the merits of the appeal. The appeal was advanced for hearing to the February 1967 session.

The ordinance here involved is substantially similar to the ordinance which the Court of Appeals of Kentucky held to be valid in *City of Shively* v. *Illinois Central Railroad Co.*, 349 S.W.2d 682. The Supreme Court dismissed the appeal for want of a substantial federal question. 369 U.S. 120.

The complaint avers that the municipal corporation has issued criminal summonses against appellant railroad for violations of the ordinance. It is our opinion that the district court did not err in holding that appellant has an adequate remedy which it has not pursued under the laws of the Commonwealth of Kentucky and in refusing to exercise jurisdiction to enjoin enforcement of the ordinance under the facts of this case. *Stefanelli* v. *Minard*, 342 U.S. 117; *Grubbs* v. *Pound*, No. 17,075, March 23, 1967, (C.A. 6).

The injunction heretofore granted by this court is dissolved and the order of the district court is affirmed.

[The Appendix to this Opinion is included in the Appendix filed herewith, at pages 18a-19a.]